

Locke Lord QuickStudy: OFAC Russia Related Sanctions Update: ?April 3, 2023?

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Russian “Exit Tax”.

As of December 2022, the Russian Federation imposed new laws that could require U.S. persons to pay an “exit tax” prior to divesting assets located in the Russian Federation; any such payment could potentially involve payments to the blocked Central Bank of the Russian Federation or the Ministry of Finance of the Russian Federation.

In response, on March 30, 2023, the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) issued amended FAQ 1118 which informs U.S. persons that Russia-related Directive 4 under Executive Order 14024 (“Directive 4”) prohibits all transactions involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation (“Directive 4 Entities”). Since the “exit tax” involves payments to Directive 4 Entities, a specific license must be obtained from OFAC prior to payment of the “exit tax.” General License (“GL”) 13D authorizes U.S. persons to pay taxes or fees involving Directive 4 Entities that would otherwise be prohibited by Directive 4 if such transactions are ordinarily incident and necessary to day-to-day operations in the Russian Federation. However, OFAC has determined the payment of the “exit tax” is not a permitted transaction under GL 13D. License applications related to the Russian “exit tax” should include information regarding the amount of the exit tax, the amount of ongoing taxes that would otherwise be paid to the Government of the Russian Federation if divestment did not occur, the impact of a failure to pay the tax on the employees of the exiting company, the specific economic activity in Russia of the exiting company, and the impact of the divestment on the Russian Federation. OFAC will expedite its review of such requests, which will be evaluated on a case-by-case basis.

OFAC is aware that the Commission that reviews divestments may include individuals from entities subject to Directive 4 or individuals listed on the Specially Designated Nationals and Blocked Persons (“SDN”) List. OFAC has further advised that U.S. persons seeking OFAC authorization to pay the exit tax are not required to obtain from OFAC a license to submit an application to the Commission for a divestment transaction.

OFAC Designations Relating to Belarus for Assisting Russian Aggression Against Ukraine.

On March 24, 2023, the OFAC designated three Belarusian state-owned entities, nine government officials, and Belarus President Alexander Lukashenko’s aircraft as SDNs in response to Belarus’ continued repression of the people of Belarus and support for the Russian Federation’s war in Ukraine. The designations were made pursuant to Executive Order 14038 (“Blocking Property of Additional Persons Contributing to the Situation in Belarus”).

Concurrently, the U.S. Department of State announced actions to impose visa restrictions on 14 individuals, including Belarus government officials, for their involvement in policies to threaten and intimidate Belarusians exercising their human rights and fundamental freedoms.

Conclusion

This paper is intended as a guide only and is not a substitute for specific legal or tax advice. Please reach out to the authors for any specific questions. We expect to continue to monitor the topics addressed in this paper and provide future client updates when useful.

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